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case.

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**IN THE
COURT OF APPEALS OF INDIANA**

RODNEY L. MAY,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 21A01-0610-CR-456
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE FAYETTE CIRCUIT COURT
The Honorable Daniel L. Pflum, Judge
Cause No. 21C01-0112-DF-202

September 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Rodney Lee May appeals the trial court's denial of his pro se "Motion for Pre-Trial Jail Credit Time While Awaiting Trial." May raises one issue, which we revise and restate as whether the trial court abused its discretion when it denied May's motion requesting credit time for 332 days during which he was incarcerated for other offenses. We affirm.

The relevant facts follow. On December 10, 2001, the State charged May with theft as a class D felony for an offense committed in Fayette County, and, on December 11, 2001, a warrant was issued for his arrest. At that time, May was incarcerated for unrelated charges. On September 23, 2002, May posted bond and was released. Four days later, May failed to appear at the initial hearing, and a bench warrant was issued for his arrest.

On July 27, 2005, May, again incarcerated, pleaded guilty to the theft charge. On July 29, 2005, the trial court sentenced May to eighteen months executed and ordered the sentence to be served consecutively to sentences May was serving for unrelated offenses. The trial court awarded May zero days of credit time.

On November 9, 2005, May filed a motion for jail time credit, which the trial court denied. On September 6, 2006, May filed a "Motion for Pre-Trial Credit Time While Awaiting Trial," which the trial court denied as a repetitive motion. Appellant's Appendix at 6.

The sole issue is whether the trial court abused its discretion by failing to grant May's second motion requesting credit time. May argues that he is entitled to 332 days of pretrial credit time under Ind. Code § 35-50-6-3, representing time "spent in pre-trial confinement on unrelated charges."¹ Appellant's Brief at 7.

We note that May did not present his pretrial credit time argument by way of a petition for post-conviction relief. Rather, in essence, he filed a motion to correct sentence under Ind. Code § 35-38-1-15. See Murfitt v. State, 812 N.E.2d 809, 810 (Ind. Ct. App. 2004). The Indiana Supreme Court has clarified the circumstances under which it is proper for a defendant to raise sentencing errors in a motion to correct sentence:

When claims of sentencing errors require consideration of matters outside the face of the sentencing judgment, they are best addressed promptly on direct appeal and thereafter via post-conviction relief proceedings where applicable. Use of the statutory motion to correct sentence should thus be narrowly confined to claims apparent from the face of the sentencing judgment, and the "facially erroneous" prerequisite should henceforth be strictly applied We therefore hold that a motion to correct sentence may only be used to correct sentencing errors that are clear from the face of the judgment imposing the sentence in light of the statutory authority. Claims that require consideration of the proceedings before, during, or after trial may not be presented by way of a motion to correct sentence.

In addition to limiting a motion to correct sentence to errors apparent on the face of the judgment, Indiana case law has long emphasized that "the preferred procedure is by way of a petition for post-conviction relief." This emphasis that post-conviction proceedings are "preferred" for raising sentencing error should not be understood to imply that the statutory motion

¹ May argues that he is entitled to credit time for his confinement from December 11, 2001, to September 23, 2002, a period of 286 days, and from July 15, 2005, to July 27, 2005, a period of 12 days. Thus, May appears to be arguing for a total number of 298 days of credit time.

to correct sentence is nevertheless permissible to raise claims that are not facially evident on the judgment. It is not. This Court “tries to encourage conservation of judicial time and energy while at the same time affording speedy and efficient justice to those convicted of a crime.” As to sentencing claims not facially apparent, the motion to correct sentence is an improper remedy. Such claims may be raised only on direct appeal and, where appropriate, by post-conviction proceedings.

Robinson v. State, 805 N.E.2d 783, 787 (Ind. 2004) (footnote and citations omitted).

In Robinson, the defendant filed a motion to correct sentence and alleged that the trial court’s sentencing judgment “reported only the actual time served before sentencing and did not comply with the statutory requirement that it also include a separate statement of credit time earned for time spent in confinement before sentencing.” Id. at 788. The defendant in that case did “not allege a calculation error that would require consideration of matters outside the face of the sentencing judgment.” Id. Instead, the defendant claimed only that required information had been omitted, and the Indiana Supreme Court determined that his claim was “the type of claim that may be asserted by a motion to correct sentence.” Id.

Unlike the defendant in Robinson, however, May does not allege that the trial court merely omitted statutorily required information from the sentencing judgment. Rather, he contends that he is entitled to 332 days of credit time representing the number of days he spent in pretrial confinement on unrelated charges. May’s claim raises an alleged calculation error that requires consideration of matters outside the face of the sentencing judgment. Following Robinson, May’s claim may not be presented by way of a motion to correct sentence. We therefore conclude that the trial court properly denied

his motion. See Murfitt, 812 N.E.2d at 811 (holding that the trial court properly denied defendant's motion to correct sentence where defendant's alleged calculation error required consideration of matters outside the face of the sentencing judgment).

For the foregoing reasons, we affirm the trial court's denial of May's motion to correct sentence.

Affirmed.

MAY, J. and BAILEY, J. concur